Supreme Court, U. S.
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SUPREME COURT, U.S.

80-5727

NO. 80-

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

MONTY LEE EDDINGS,

Petitioner,

-v-

STATE OF OKLAHOMA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO
THE OKLAHOMA COURT OF CRIMINAL APPEALS

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QUESTIONS PRESENTED

1. Whether the infliction of the death penal child who was sixteen at the time of the crime constitu and unusual punishment under the Eighth and Fourteenth to the Constitution of the United States?

2. Whether the Oklahoma Court of Criminal Ap construed or applied 21 Okla. State. §701.12(4) in an i vague or overbroad fashion in violation of the Eighth A and the Due Process Clause of the Fourteenth Amendment Constitution of the United States?

3. Whether a state is obligated by the Due I Clause and the Equal Protection Clause of the Fourteent to provide funds to all indigent capital defendants fo expert or investigative assistance when the state has a statute to provide assistance to those defendants in co a population exceeding 200,000 persons?

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THE OKLAHOMA COURT OF CRIMINAL APPEALS

Petitioner, Monty Lee Eddings prays that a Certiorari issue to review the judgment of the Oklah of Criminal Appeals in this case.

CITATION TO OPINION BELOW

The opinion of the Oklahoma Court of Crim is reported in Eddings v. State, 616 P.2d 1159, (Ok den. 566 Ed 2d 763 and is attached hereto as Append

JURISDICTION

The judgment of the Oklahoma Court of Cri was entered on March 21, 1980. A timely Petition f was denied on September 15, 1980, at which time the Criminal Appeals stayed the execution warrant for s pending appeal. This Court's jurisdiction is invok

to 28 U.S.C. §1257(3), petitioner having asserte
asserting herein deprivation of rights secured
States Constitution.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. This case involves the Eighth Ame
Constitution of the United States, which provid
part:

> "nor cruel and unusual punishmen
> inflicted;"

and the Fourteenth Amendment to the Constitutio
States, which provides in relevant part:

> "No state shall . . . deprive an
> person of life, liberty, or pro
> without due process of law; nor
> to any person within its jurisd
> the equal protection of the law

2. This case also involves the follo
of the statutes of the State of Oklahoma:

21 Okla. Stat.

> §701.9 - Punishment for Murder
>
> A. A person who is convicted
> guilty or nolo contendere to mur
> first degree shall be punished b
> imprisonment for life.

21 Okla. Stat.

> §701.10 - Sentencing Proceeding
> Murder in the First De
>
> Upon conviction or adjudicatio
> a defendant of murder in the fir
> Court shall conduct a separate s
> ceeding to determine whether the
> be sentenced to death or life im
> proceeding shall be conducted by
> before the trial jury as soon as
> out presentence investigation.
> has been waived by the defendant
> if the defendant pleaded guilty
> the sentencing proceeding shall
> the court. In the sentencing pr
> may be presented as to any mitig
> or as to any of the aggravating
> ated in this act. Only such evi

as the state has made known to t
prior to his trial shall be admi
this section shall not be constr
the introduction of any evidence
lation of the Constitution of th
or of the State of Oklahoma. Th
defendant or his counsel shall b
present argument for or against

21 Okla. Stat.

§701.11 - Instructions - Jury fi
circumsta

In the sentencing proceeding,
instructions as determined by th
warranted by the evidence shall
charge and in writing to the jur
tion. The jury, if its verdict
recommendation of death, shall d
signed by the foreman of the jur
aggravating circumstance or circ
unanimously found beyond a reas
non-jury cases, the judge shall
tion. Unless at least one of th
aggravating circumstances enume
so found or if it is found that
circumstance is outweighed by th
or more mitigating circumstances
shall not be imposed. If the ju
reasonable time, agree as to pur
shall dismiss the jury and impos
prisonment for life.

21 Okla. Stat.

§701.12 - Aggravating Circumsta

Aggravating Circumstances shall

1. The defendant was previous
felony involving the threat or
the person;

2. The defendant knowingly c
of death to more than one perso

3. The person committed the
tion or the promise of remunera
another to commit the murder fo
the promise of remuneration;

4. The murder was especially
or cruel;

5. The murder was committed
avoiding or preventing a lawful
tion.

6. The murder was committed
serving a sentence of imprisonm
a felony; or,

7. The existence of a pro
defendant would commit crimi
that would constitute a cont
society.

21 Okla. Stat.

§701.13 - Death Penalty - Re

A. Whenever the death per
upon the judgment becoming f
the sentence shall be review
the Oklahoma Court of Crimin
of the trial court, within t
receiving the transcript to
Criminal Appeals together wi
by the clerk and a report by
notice shall set forth the t
of the case, the name of the
and address of his attorney,
of the judgment, the offense
prescribed. The report shal
standard questionnaire prepa
Oklahoma Court of Criminal A

B. The Oklahoma Court of
consider the punishment as w
enumerated by way of appeal.

C. With regard to the sen
determine:

1. Whether the sentence w
the influence of passion, pr
arbitrary factor;

2. Whether the evidence s
the judge's finding of a sta
circumstance as enumerated i

3. Whether the sentence w
disproportionate to the pena
cases, considering both the

D. Both the defendant and
right to submit briefs withi
the Court, and to present or

E. The court shall includ
reference to those similar c
consideration. In addition
ing correction of its errors
to review of the death sente
to:

1. Affirm the sentence of

2. Set the sentence aside
for modification of the sent
for life.

F. The sentence review sh
direct appeal, if taken, and

shall be consolidated
court shall render its
enumerated, the factua
verdict, and, the vali

STATEMENT OF TH

The Day of the Murder

On April 4, 1977, at the ag
months, Monty Lee Eddings ran away fr
with three friends, heading west in a
After picking up a hitchhiker outside
teenagers pulled into a Howard Johnso
As he was reentering the highway, Edd
onto the floor and momentarily lost c
it to swerve briefly into a shallow d
service station reported the incident
was having coffee inside the resterau
would investigate and subsequently ov
on the highway.

After the officer had motio
to pull over, he left his police car
on the driver's side. Eddings picked
the floor, turned around and fired on
at a distance of six to eight feet.
tering incoherently (T.42[illegible]). He was a
road.

___/ Each reference to the transcript
hearing held May 15 and 17, 1978 in
County, Oklahoma, will be indicated

Petitioner's Background

Monty Lee Eddings grew
father, who divorced Eddings' mot
old. Shortly after the divorce,
cycle policeman, an authoritarian
(T. 248). (A psychiatrist, later
at his sentencing hearing, testif
highway patrolman who had stopped
anger against "the policeman who
stole his mother away") (T. 251).

After the death of his
Monty was sent to live with his n
Monty with regularity (T. 163) an
his son (T. 180).

At about the age of fou
difficulty with the juvenile auth
throughout his chaotic early adol
shuttled back and forth between h
who exercised no discipline whats
by prostitution (T. 151, 153), an

In tests at the Eastern
arrest in 1977, Monty scored poor
normal intelligence, a mental age
three months, and a sociopathic c
191, 194).

The Certification Hearing

Subsequent to being cha
a juvenile certification hearing
of Creek County. The District Co

to stand trial as an adult fo
appealed to the Oklahoma Cour
an opinion on February 22, 19
under the age of 18, 584 P.2d

The Trial

On May 8, 1978, pet
contendere and was adjudged g
May 15, 1978, the State prese
hearing while all flags in th
official proclomation in hono
in the line of duty (T. 2).

The State's witness
patrolmen, the passengers in
by on the turnpike, a medical

On May 17, 1978, th
Eddings' juvenile officer, a
examined Eddings prior to the
sociologist from Oral Roberts
None of the three expert wit
more than an hour, and their
earlier, prior to the certifi
no funds, sought state assist
to do an adequate examination
but this request was denied.
to point out that the expert
obtain voluntarily had spoken
seen him in nearly a year. T
competence of the volunteer s
gical matters.

s
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by
llen

ssers-

ses:
o had
teer
chiatrist.
for
a year
o had
iatrist
[cite],
quick
to
not
ed the
ycholo-

The District Co
in support of the death s
atrocious and cruel," (T.
for the purpose of avoidi
prosecution (T. 287), and
threat to society (T. 288
mitigating factor, the ag
crime.

HOW THE FE
RAISED

1. In his firs
Oklahoma Court of Crimina
Eighth Amendment to the C
lutely preclude[s] the ex
crim committed as a juven
and unusual," Brief of Ap
petitioner's claim, holdi
unusual punishment to imp
Eddings v. State, supra,

In his Petition
petitioner alleged as his
persons for crimes commit
Petition at 1. The Petit
without opinion.

2. In a pre-tr
bill of particulars, whic
circumstances, petitioner
case were not especially
statutory terms would be

ctors
henious,
ommitted
st or
a
one
of the

ppeal to the
that the
es "abso-
dult for a
th cruel
urt rejuected
e cruel and
etitioner"

Brief,
cution of
unusual,"
Court

cutor's
aggravating
itioner's
nd that the
mployed in

petitioner's case. Du
petitioner renewed his
court deferred any dec
(T. 139-40).

After receip
found that "this parti
standards" (T. 206).

In his secon
asserted that the aggr
"snare any perpetrator
18 (emphasis added).
identical circumstanc
of that term" because
it was directed only
Brief of Appellant, a
circumstance had not

The Oklahom
that

> "[t]here ar
> he recogni
> which he h
> it. But [
> danger. I
> We believe
> in the per
> words of t
> and shocki
> and vile.'

Eddings v. State, sup

In his Peti
second proposition th
atrocious and cruel
vague and overbroad,"
without opinion.

3. On Apri
filed a motion allegi
trial court to author

s trial,
the trial
he proceedings

l court
se particular

, petitioner
n could
lant, at
d Florida's
'the vagueness
urt of Florida,
s crime,"
the aggravating

laim stating

danger:
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fficer
the
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nton

alleged as his
hrase "heinous,
onstitutionally
was denied

petitioner
uesting the
ic examination.

The motion was der

In his f

alleged that "give
an investigator or
Such circumstances
41. Petitioner al
(1971) psychiatric
"been apprehended
200,000 ... to pro
crime in larger co
crime elsewhere wo
of the Fourteenth

The Okla

that "the petition
investigator or ps
of law, but we hav
Nor are we offende
larger counties."

In his P

his sixth proposit
gative and psychia
of due process and
tion" Petition at
court without opir

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THE CO
CONSID
APPLIED
AND UNU
AND FOURTE

Defendar

months old when he committed the murder for which he has been sentenced to die. His childhood had been marred by an early divorce, a violent and deprived upbringing, and by the emotional turmoil that resulted from being moved back and forth between two sets of parents and the juvenile authorities. At the time the murder was committed, Monty Lee Eddings was in the process of running away from his "home" in Missouri.

This Petition raises the question of whether, in light of the "evolving standards of decency that mark the progress of a maturing society," Trop v. Dulles, 356 U.S. 86, 101 (1958), a state may continue to countenance the imposition of the death penalty upon a child. This question was reversed by this Court in its decision in Bell v. Ohio, 438 U.S. 637, 642 n. (1978).

The notion that the Eighth Amendment may forbid the imposition of death as cruel and unusual for certain offenses is not, of course, a new one. In Coker v. Georgia, 433 U.S. 584 (1976), this Court determined that the death penalty could not constitutionally be carried out against rapists because it was "excessive" or "grossly out of proportion" to the crime. Id. at 592. As in Gregg v. Georgia, 428 U.S. 153 (1976), the Court in Coker looked to "objective factors" including "public attitudes concerning a particular sentence, history and precedent, legislative attitudes and the response of juries reflected in their sentencing decisions," Coker v. Georgia, supra, 433 U.S. at 592, to determine whether the punishment imposed was excessive.

The gross disproportionality of child executions is evidenced by widespread state statute and policies which protect juveniles from criminal court proceedings, by nationwide legislative executive and judicial recognition of a defendant's youth as an important mitigating factor in capital and non-capital cases, by international condemnation of child execution, and by the strong reluctance of American courts and juries to sentence children to

death. The extreme rarity of such sentences and the large numb of children who are automatically disqualified from being cons for the punishment operates to make the imposition of death in cases involving young persons "freakish" in its rarity. Furma Georgia, 408 U.S. 238, 310 (1972) (Stewart J. concurring).

In virtually every state, juvenile statutes have long be in operation to protect delinquent children from adult crimina proceedings.[2] Many states provide for some form of judicial waiver or certification procedure, usually with a minimum age limitation below which the juvenile is totally insulated.[3]

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1. H. Lou, Juvenile Courts in the United States, (1927); M. Rosenheim, Justice for the Child, (1962); Mac, "Juvenil Courts," 23 Harv. L. Rev. 104 (1909); Paulsen, "Fairness to Juvenile Offenders," 41 Minn. L. Rev. 547 (1957); Ferst Courtless, "The Beginning of Juvenile Justice - Police Pra and Juvenile Offenders," Vand. L. Rev. 567 (1969); Fox, "T Reform of Juvenile Justice & Historical Perspectives," 22 Stan. L. Rev. 1187 (1970); Mennel, "Origins of Juvenile Courts: Changing Perspectives and Legal Rights of Juvenile Delinquents." 18 Crime and Delinquency 68 (1972).

2. Ala. Code §12-15-34(A) (1975); Ark. Stat. Ann. §45-47, 45- (Supp. 1979); Colo. Rev. Stat. Ann. §19-1-104(4)(A) (1978) Conn. Gen. Stat. Ann. §46(D) - 120 (Supp. 1979; Del. Code Tit. 10 §937(C) (5), 938(C) (Supp. 1978); 18 D.C. Code §16 (A) (1973); Fla. Stat. Ann. §39.02(5)(A)-(B) (Supp. 1979); Ga. Code Ann. §24(A)-401(C) (1), (3), (Supp. 1979); Hawaii Rev. Stat. §571-22(A) (1976); Idaho Code §16-1806(1 (1979); Ill. Ann. Stat. Tit. 37, §702-2--5 (1972); Ind. Co Ann. §31-6-2-4(B)-(D) (Supp. 1979); Ky. Rev. Stat. Ann. §2 (1) (Supp. 1978); La. Rev. Stat. Ann. §13:151.1 (A) (1), ((Supp. 1979); Ma. Rev. Stat. Ann. Tit. 15, §3101(4)(A) (Su 1979); Md. Code Ann., Cts. & Jud. Troc. §3-817(A) (Supp. 1 Mass. Gen. Laws Ann. Ch. 119, §61 (Supp. 1979); Mich. Comp Laws Ann. §712(A).4(1) (Supp. 1979); Miss. Code Ann. §43-2 105(J), 43-21-159(3) (Supp. 1979); Mo. Ann. Stat. §211.071 Mont. Code Ann. §41-5-206(1)(A) (1979); Neb. Rev. Stat. §4 (3)(B)-(C) (1978); Nev. Rev. Stat. §62.080 (1977); N.H. Re Stat. Ann. §169-B:24 (Supp. (1979); N.J. Stat. Ann. §2(A): (A)-(B) 2(A):4-49 (Supp. 1979); N.M. Stat. Ann. §32-1-29(A 32-1-30(A)(1) (1978); N.Y. Fam. Ct. Act §712(A)(ii) (McKin Supp. 1979); N.Y. Penal Law §10(18), 30(2) (McKinney Supp. N.Y. Crim. Proc. Law §180.75, 190.71, 210.43, 220.10(G) (McKinney Supp. 1979); N.C. Gen. Stat. §7A-507(1), (12), ((20), (21), (28), (Supp. 1979); N.D. Cent. Code §27-20-34((Supp. 1979); Ohio Rev. Code Ann. §2151.26(A) (1978); Okla Stat. Ann. Tit. 10, §1112(B), 1104.2 (Supp. 1979); Pa. Sta Ann. Tit. 42, §6355(A)(1), (E), 6302; 6322(A), 6355(E) (19 R.I. Gen. Laws Ann. §14-1-7, 14-1-7.1 (Supp. 1978); S.C. C §14-21-20(C), 14-21-510(C) (Supp. 1978); S.D. Compiled Law §26-11-3 (1976); Tenn. Code Ann. §37-234(A)(1) (1977); Tex Code Ann. §54.02(A)(1)-(2)(J) (197 & Supp. 1980); Utah Cod Ann §78-38-25 (1977); Vt. Stat. Ann. Tit. 33, §"632(A)(1), 635(D) (Supp. 1979); Va. Code Ann. §16-1-269(A) (Supp. 197 W.Va. Code Ann. §49-5-10(C)-(D) (Supp. 1979); Wyo. Stat. A §14-6-203(C), 14-6-211 (1978).

Other states provide for some form of legislative waiver of proceedings, with age limits depending on the type of crime punishment.[4]

As this Court noted in Kent v. United States, 383 541 (1966), "the objectives [of juvenile proceedings] are t provide measures of guidance and rehabilitation for the chi and protection for society." See generally In re Gault, 38 U.S. 1 (1967).

The juvenile laws are rehabilitative in nature, b on the assumption that childi n and adolescents are not who responsible for their actions, and that they deserve the op for guidance and reform, so as to have the chance to lead p ductive adult lives.[5] The rehabilitative theory of puni is perhaps best suited to the juvenile offender, since reha techniques may have a greater chance of success if begun wh the child's personality is still in a state of relative flu As is true in petitioner's case, the juvenile offender is o the product of traumatic and underprivileged circumstances his control, and is uniquely deserving of a second chance.

The reluctance of the states to mete out their ha remedies upon their children is further evidenced by the wi spread specification of age as an absolute preclusion or as mitigating factor in the application of the death penalty. least four states specifically prohibit the imposition of t death penalty on children under sixteen, seventeen or eight years of age.[6] Over thirteen states have specified defendant

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4. See Feld, Barry C. "Reference of Juvenile Offenders for Prosecution: The Legislative Alternative to Asking Una able Questions," Minnesota Law Review 62: 515-618 (Apr July, 1978), especially p. 526 (no. 38) and p. 556 (n. This article also outlines the history of the "rehabilit ideal" in juvenile statutes.

5. Feld, supra, at 516.

6. Penal Code §190.5 (West. Supp. 1978) Nev. Rev. Stat. §176 & Supp 1977); Tenn. Code Ann. 39-2404(h)(i)(1) (Supp 19 Penal Code tit. 1 §807(d) (Vernon Supp. 1978).

youth as a mitigating factor in capital sentencing.[7]

The Model Penal Code recognized, as early as 1
"the youth of the defendant at the time of the crime," t
a mitigating circumstance, ALI Model Penal Code & 210.6
Official Draft 1962). This Court has also noted the imp
of the defendant's youth as a mitigating factor in capit
ing. See Roberts (Harry) v. Louisiana, 431 U.S. 633,637
Lenient state policy towards juvenile murder defendants
reinforced by the high rate of executive commutations of
death penalty for applicants under the age of 20.[8] Exe
pardon is presently available for a youth in every state
permits capital punishment.

Execution of the young is repudiated not only
most of the United States, but in other countries as wel
October 5, 1977, President Jimmy Carter signed the Inter
Covenant on Civil and Political Rights, as part of the I
Bill of Human Rights. Part III, Article 6, Clause 5 of t
provides that "Sentence of death shall not be imposed fo
committed by persons below eighteen years of age and sha
be carried out on pregnant women." International Bill o
Rights, New York: United Nations, 1978 (p.23) (emphasis
In reserving the right of the United States to "impose
punishment on any person duly convicted," the State Dep
noted that the "[purpose of the reservation] was certai
the preservation of any right to execute children or pr
women, something never done in the United States.

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7. See Conn. Gen. Stat. Ann. §63a-46a(f)(1) (West. Sup
Fla. Stat. Ann. §921.141(6)(g) (West Supp. 1978); I
Stat. ch.38 §9-1(b) (Smith Hurd Supp. 1978); Ky. Re
§532.025(b)(8); La. Code Crim. Pro. art. 905.5(f)(S
Md. Ann. Code art. 27 §134(b)(2) (Supp. 1977); Mo.
§565.012(3)(7)(Vernon Supp. 1978); Neb. Rev. Stat.
(1975); N.C. Gen. Stat. §15A 2000(f)(7) (1978); 18P
Stat. Ann. §1311(d)(2)(i) (Supp. 1978); Utah Code A
(1)(e) (Supp. 1977); Wash. Rev. Code §9A.32.045(2)(
1978); Wyo. Stat. Ann. §6-4-102(j)(vii)(1977).

8. H. BEDAU, The Death Penalty in America, 420 (Anchor

International Human Rights Treaties, Hearings befor
of Foreign Relations, 96th Congress, First Session,
14, 15, 16, and 19, 1979 (p.55).

To date, the Covenant on Civil and Politi
has been signed and/or ratified by 73 nations, incl
Britain, West Germany, Japan, Israel, and the U.S.S

The framers of the Eighth Amendment were
a legacy of brutal and excessive punishments which
the adoption of the English Bill of Rights in 1689.
legal system had discriminated little on the basis
"Adolescents as well as children could be -- and ac
sentenced to death and even executed."[10] Yet eve
the execution of children was abhorred by public se

The actual imposition of the death penalt
has become so rare in this country as to be practi
existent. A history of execution in the United Sta
only twelve executions of sixteen year old children
one child aged less than sixteen has ever been exec
of 5,706 total United States executions, and 3,128
for which age data is available. The most recent o

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9. See generally Weissbrodt, David, "U.S. Ratifica
Human Rights Covenants" Minnesota Law Review 6
1978). The U.S. Congress has not yet ratified
on Civil and Political Rights.

See "Multilateral Treaties in respect of which
General Performs Depositary Functions; List of
Ratifications, Accessions, etc. as at 31 Decemb
New York: United Nations, 1980, (pp.111-112).

10. L. Radzinowicz, A History if English Criminal L
"The Movement for Reform 11 (London, 1948).

11. Ibid, at 13.

executions occurred in 1948.[12]

The decrease in executions of young pe
is demonstrated by the total figures for all per
age of twenty. Prior to 1950, 229 teenagers wer
of 2,678 executions with available age data). S
26 teenagers have been executed (out of 450 exec
able age data) (Bowers). As of December 31, 197
prisoners out of 444 on death row were under twe
age.[13]

The States of Missouri and Oklahoma a
in agreement with international condemnation of
In Monty Lee Eddings' home state of Missouri, nc
the age of twenty has ever been executed. In Ok
two teenagers have ever been executed, one in 1
in 1937. The youngest person ever to be execut
was eighteen years old when he was received in

Indeed, fifty-six years ago, the Oklal
Criminal Appeals, in reversing the death senten
year old boy, wrote that,

> "If this offender had been a person o
> mature years and understanding under
> cumstances like these, this court wou
> not hesitate for a moment in affirmin
> death penalty. But here our juvenile
> statutes and the policy towards juven
> offenders are involved. . ."
>
> "It was the intention of the Legislat
> that the death penalty should be infl
> only where the offender was both culp
> and responsible in the superlative de
> This crime was reprehensible in the h
> degree, but the record shows that the
> trator, by reason of his youth, his l
> home training and unfavorable environ
> probably had not had adequate compreh
> of the enormity of the offense or of
> criminal responsibility."

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12. W. Bowers, Executions in America, (Lexingt

13. United States Department of Commerce, Bure
Statistical Abstract of the United States:
ed.)

Ridge v. State, 28 Okla. Cr. 150, 229 P.649

The defendant submits that the exe year old "criminal" in the year 1980 is the and unusual punishment. The execution of An nonexistent in practice and is barred by eve standard for capital sentencing. The Court to consider whether the State of Oklahoma ma be permitted to enforce this freakish penalt case.

II.

THE COURT SHOULD GRANT CERTIORAR CONSIDER WHETHER THE COURT'S TREA OF STATUTORY AGGRAVATING CIRCUMST IS UNCONSTITUTIONALLY OVERBROAD IMPERMISSABLY DISTORTS THE WEIGH PROCESS REQUIRED TO PREVENT ARBI INFLICTION OF THE DEATH PENAL

Section 701.12(4) of the Oklahoma (21 Os. Supp. 1978 §701.9-701.15) identifies circumstance that a murder was "especially h or cruel." A similar statutory provision wa face in Gregg v. Georgia, 428 U.S. 153 (1976 that the state supreme court would not adopt construction" as to allow imposition of the any murder case" id. at 201 (opinion of Stew Stevens, JJ.) In Proffit v. Florida, 428 U. an identical provision was upheld because it by the state court interpretation. In Godfr 64 L.Ed.2d 398 (1980), this Court again revi statutory provision and found that the law h narrowed to "Distinguish [Godfrey's] case, i penalty was imposed, from the many cases in id. at 409.

In the present case, both the Dist Oklahoma Court of Criminal Appeals failed to

similar clause in any meaningful way. T
was killed by a single shotgun blast fir
vehicle at a distance of six to eight fe
not preceded by any physical or mental t
death was completely unexpected , unprov
taneous.

The extremely broad interpreta
this case will make meaningful comparati
in the future. The District Court's fac
definitions of the statutory language co
any murder committed in the State of Okl

> Insofar as aggravation is conc
> does find beyond a reasonable
> particular time, that the firs
> leged by the State of this par
> henious, atrocious and cruel,
> a reasonable doubt at this tim
> crime does meet those particul
> regard, the Court particularly
> the henious crime is concerned
> I have researched indicates to
> was an extremely wicked or sho
> And this supports the Court's
> that aspect is concerned. Ins
> the Court finds beyond a reasc
> this crime was an atrocious cr
> ally find that the definition
> outrageously wicked and vile.
> the definition of cruel that I
> that it must be designed to in
> of pain, utter indifference to
> suffering of others. I find c
> lar definition to be complied
> able doubt, and that is that i
> flict a high degree of pain, a
> difference to the rights of Pa

(T. 286-287). The Oklahoma Court of Cri
suit in affirming the sentence below, ca
words of the Florida Court, 'extremely w
evil,' and 'outrageously wicked and vile'
a high degree of pain with utter indiffe
of others.' "Eddings v. State, supra, 6
as this Court has noted in Godfrey v. Ge
is nothing in these few words, standing
inherent restraint on the arbitrary and

of the death sentence" id. at 406.

It is clear from the record
case do not approach the level of "e
or atrocious" behavior found in prio
Florida, 428 U.S. 242, 255 n. 12. P
in fact far less reprehensible than
Godfrey v. Georgia, in which this Co
Court's interpretation of a similar
overbroad.[14]

The Defendant in Godfrey c
trailer, first shot his wife in the
and mother-in-law, then struck his d
the barrel of the gun, reloaded the
to shoot his mother-in-law, "whose l
being must have been as terrifying a
id. at 419 (Rehnquist, J., dissentin

In the present case, by co
was shot at a distance of six to eig
and presumably died instantaneously.
present case filled out a "Report of
he answered "no" to the question: "
harmed or tortured prior to death?"

Apparently the Oklahoma co
argument that the "cold-blooded murd
the performance of his duties is per
and atrocious" (Brief of Appellee, P
Appeals stated, "We believe that thi

---

14. The Oklahoma court's failure to
gravating circumstance results
to compare the death sentence i
other death sentences imposed u
atrocious, or cruel" clause. S
were decided on the basis of th
to interpret the clause, as of
of looking to death sentences i
with similar aggravating circum

in the performance of his duties
and 'shockingly evil,' and 'outra
State, supra, 616 P.2d at 1168.

The error of the Oklah
The Oklahoma statutory scheme pr
circumstance and that court was
circumstance that has been speci
legislature. In light of this C
Georgia, it is axiomatic that t
cannot invent new statutory prov
See generally Presnell v. Georgi

III.

THE COURT SHOULD GRA
CONSIDER IF A STAT
PROVIDE FUNDS FOR AN
FOR A PSYCHIATRIST
INDIGENT DEFENDAN
POPULOUS COUNTIES
DUE PROCEES AND EQU
DENY SUCH ASSISTANC
CAPITAL DEFENDANT
POPULOUS

The circumstances of t
rise to this case and petitioner
the need for mental health exper
at trial. Monty Lee Eddings cam
he was a victim of commonplace v
Highway Patrolman stepfather, it
thorough psychiatric examination
gating significance concerning p
conscience motivation in this ca
motion requesting that he be pro
a psychiatric examination was de
denial has been upheld by the Ok
even though had petitioner's cri
county, such assistance would ha

15. 22 Okla. Stat. §1271 (1971)

gs v.

a

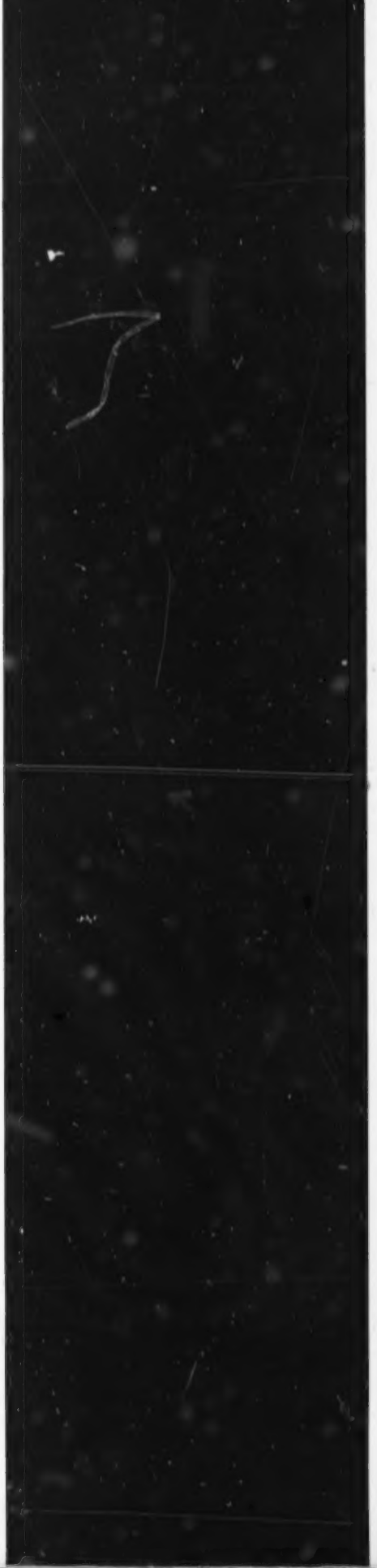
an v.

It is a basic princ
in access to the instruments
when based on the financial s
nant to the Constitution. Rol
42 (1967). The State is requ
tools of an adequate defense
404 U.S. 226, 227 (1971), to
right to effective assistance
as in the present case, violat
rights are argued. See Wolff
(1974). The right to effecti
ficant in death cases, where
to see that every safeguard i
428 U.S. 153, 187 (1976).

The indigent crimina
the courts extends beyond the
"[T]he right to counsel is mea
to make an effective defense b
the specialized testimony whic
McCollum, 231 F. Supp. 560, 56
672 (5th Cir. 1965).

This Court should gr
proper extent of expert psycho
defendants in capital cases, w
bearing on the finding of a ps

Proper tests for the
an indigent defendant are whet
engaged by a counsel for a non
United States, 498 F.2d 505 (8
attorney, United States v. Har
1975). In considering the sco
Act, the United States Circuit
that psychological assistance
of "expert services," United S



(D.C. Cir. 1973) and that
psychological assistance
pay and whether such assi
defense. See also United
Cir. 1976).

The indigent de
psychological assistance
phase of a capital case,
of a mitigating factor.
this Court held that "The
ment require that the sen
ing as a mitigating facto
or record or any of the c
defendant proffers as a
id. at 601. To deny an i
to establish such a mitig
its consideration.

In the present
sentencing phase were ina
the mitigating factor of
at the time the crime was
included a Court-appointe
and a private psychiatris
viewed defendant for more
were conducted prior to t
funds for adequate assist
case simply could not be

Petitioner pray
be granted.

IN THE COURT OF CRI

MONTY LEE EDDINGS,

Pet

-vs-

THE STATE OF OKLAHOMA,

Res

BRETT, Judge:

Monty Lee Edding
on April 4, 1977. Becau
have him certified to
granted by the District
certification on appea
(1978), cert. denied,
(1978). Subsequently,
a charge of Murder in t
County, Case No. CRF-7
and mitigating circumst
death. Title 22 O.S.
effect of a plea of nol
plea of guilty; and for
tion for certiorari.

Title 21 O.S.Su
review the propriety o
addition to any direct
death, but the Statute
review shall be consol
both the State and the
present oral argument
argued on the 7th day o

The petitioner's

Oklahoma Highway Patrol. The testimony of witnesses established that the petitioner had taken his brother's automobile, and that he and his sister and two friends had run away from their homes in Missouri. Before leaving, the petitioner had taken three of his father's firearms and had shortened the barrel on at least one--a .410 gauge shotgun. Before getting to the Turner Turnpike at the Tulsa gate, the group picked up a hitchhiker. They stopped at a service station/coffee shop for refreshments, and as they were leaving, the petitioner, who was driving, lost control of the car briefly because he had dropped his cigarette and was trying to find it. The car went over a curb and down into the bar ditch before the petitioner regained control, but he pulled back onto the highway and continued toward Oklahoma City. A man who saw the incident told Patrolman Crabtree, who was in the coffee shop, and the officer said he would check on the matter.

As the runaways were driving along, one of the passengers in the back seat said there was a police car behind them. The petitioner said, "If the fucking cop harrasses me I'll shoot him." The passengers treated the remark as a joke; but when the officer turned on his red light and the petitioner pulled off the road, he took the sawed-off shotgun from the floor of the car and loaded it. When Patrolman Crabtree was about six feet away, the petitioner stuck the shotgun out the window and fired. Immediately he drove away.

Evidence was presented to the court concerning the petitioner's extensive juvenile record in Missouri. The product of a broken home, he was shuffled back and forth between his mother's house and his father's house, and also spent some time in "group homes" operated by the State of Missouri. A petition was filed in November, 1975, when the petitioner was 14, charging him with four counts of burglary in the second degree and tampering with a motor vehicle. He was adjudicated delinquent and made a ward of the court. In September, 1976, a supplementary petition was filed alleging assault with the intent to do bodily harm; and in that same month another petition charged burglary in the second degree and stealing. In addition, there was a charge of tampering with

mail boxes. According to testimony, the petitioner's conduct steadily worsened until he was returned to his parents' custody. In March, 1977, the petitioner violated his probation by running away from home. He was found in Oklahoma and returned to Missouri.

There was also testimony of statements made by the petitioner both before and after he was taken into custody. As he drove away from the scene of the murder, he said he would rather have killed a cop than go back to where he lived. At one point after he had been taken to jail, he said to two officers, "If I got loose I would shoot you all, too." And at another time after having twice asked to have a light turned off, he told an officer, "Now I have shot one of you people, and I'll get you too if you don't turn this light out."

II

While the petitioner asks to be permitted to withdraw his plea of nolo contendere, all of his assignments of error relate in one way or another to the imposition of the death penalty in his case. He argues first that it would be cruel and unusual punishment to impose the death penalty on a juvenile. Next, he contends that his motion to strike the bill of particulars regarding the sentence should have been sustained, that none of the statutory aggravating circumstances were established beyond a reasonable doubt, and that the aggravating factors in his case were outweighed by the mitigating factors. In his third assignment of error, the petitioner claims that the State suppressed evidence which he could have used to counter one of the aggravating circumstances alleged in the bill of particulars. And, finally, he says he should have been given the services of an investigator and a psychiatrist at State expense. For the sake of convenience, we will discuss the petitioner's arguments out of order.

A

One of the aggravating circumstances found by the District Court was that the murder was committed "for the purpose of avoiding or preventing a lawful arrest or prosecution." Title 21 O.S. Supp.1978, § 701.12. The petitioner claims that the State knew,

but failed to tell, of a witness who could have aided him in att ing this particular circumstance. This witness would have te fied that although the traffic stop was made because of a mi meanor committed by the petitioner in leaving the turnpike ser station, Patrolman Crabtree did not actually see the offense merely heard of it from the undisclosed witness. Thus, the p tioner argues, the officer did not have the right to make warrantless arrest. And this particular aggravating circumst would not have been found had the witness been brought to test

The petitioner had filed appropriate pretrial motic seeking disclosure of any exculpatory evidence held by the St At the pretrial conference the prosecutor insisted that he kne no evidence which would tend to establish the petitioner's i cence or limit the sentence. He agreed that if he did become a of any evidence he would make it known to the petitioner, and court so ordered in a court minute. The petitioner alleges the State knew all along that the patrolman did not see incident at the station. He cites Brady v. Maryland, 373 U.S. 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963); United States v. Agurs, U.S. 97, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976); and Blevens State, Okl.Cr., 487 P.2d 99 (1971), in arguing that the Dist Attorney acted in bad faith in not only keeping secret his k ledge of the affair, but also in continuing to assert that a la arrest had been made.

The petitioner's assertions are called into question by record. He alleges that he did not find out about the witness u the State had concluded its evidence of aggravation, on May 1978; but on April 10, 1978, he filed a motion to strike the bil particulars regarding the death penalty, and in that motion he that "the evidence shows that Patrolman Crabtree was not maki lawful arrest, the offense for which the defendant was stop being a misdemeanor not committed in the presence of the offic

Also, we do not accept the petitioner's claim that District Attorney was acting in bad faith by continuing to as that a lawful arrest had been made. There are many reasons

making a legitimate traffic stop. The fact that the petitior attack one does not eliminate all others. We will discuss issue in depth when we take up the aggravating circumstances

B

The petitioner was not entitled to State funds to h investigator or a psychiatrist. He insists he was denie process of law, but we have dealt with this question in the See, for instance, Bills v. State, Okl.Cr., 585 P.2d 1366 (and Dennis v. State, Okl.Cr., 561 P.2d 88 (1977).

He claims that under 22 O.S.1971, § 1271, he would hav entitled to investigative and psychiatric assistance ha committed his crime in a county having a population in exc 200,000. Section 1271 provides for the assistance of coun county expense for those who are unable to retain private co but counties having a population in excess of 200,000 are exp excluded from the provisions of this Section. Such counti covered by 19 O.S.1971, §§ 138.1 et seq.; and § 138.6 provid the employment of one or more investigators in the larger cou There is no provision for psychiatric assistance.

In Bills v. State, supra, we held that the stat distinction between the counties with 200,000 people or le the counties with more than 200,000 people is not an unc tutional discrimination. The petitioner has asked us to ov Bills, but we still believe that case is correct. As we said indigent defendants in every county in the state are give assistance of counsel, whether salaried under the public de system or paid individually, at county expense. There rational basis for the division, since the larger counties ur edly have greater numbers of indigent defendants. It is a decision for the Legislature to make as to the point at whi case load justifies a full-time public defender as oppos taking each case separately.

Nor are we offended by the provision for investigat the larger counties. Such a system indicates an economicall division of labor: If a public defender's office could nc

persons to concentrate on investigating cases then more would have to be hired, since without the services of th gator each attorney would have to spend more time on eac

It is true that the District Court was in error that the petitioner was not indigent just because he ha counsel. See Bruner v. State ex rel. Dist. Court, Okl. Cty 581 P.2d 1314 (1978). But even if the court had correctl to be indigent, he would not have been entitled to the he sought.

Finally, we do not see that the petitioner suf injury from the lack of assistance of either an investi psychiatrist. The only specific point on which he urg investigator would have been beneficial is the so-calle sion of evidence by the prosecutor. But as we have appears that the petitioner did know about this issue. without the use of State funds, the petitioner presented mony of three expert witnesses: A psychologist from Eas Hospital, a psychiatrist in private practice, and a so from Oral Roberts University who teaches courses in th criminal law. The petitioner says that the doctors' t were significantly different from that which they gav certification hearing, and he attributes this to a lack o pay for a reevaluation. But we have examined the tran both the certification and the sentencing hearings, and monies are not significantly different.

C

Although the petitioner is now almost 19, he was murder was committed, and he urges that youth should be an absolute mitigating circumstance barring applicatio death penalty. In support of his argument, the petiti Roberts v. Louisiana, 431 U.S. 633, 97 S.Ct. 1993, 52 L (1977). Roberts involved a statute which required t penalty if the murder victim was a peace officer engag performance of his duties. In reversing the death sen United States Supreme Court made the following comment:

"To be sure, the fact that the murder victim w
peace officer performing his regular duties ma
regarded as an aggravating circumstance. Ther
a special interest in affording protection
these public servants who regularly must ri
their lives in order to guard the safety of o
persons and property. But it is incorrect
suppose that no mitigating circumstances c
exist when the victim is a police officer.
Circumstances such as the youth of the offen
the absence of any prior conviction, the influ
of drugs, alcohol or extreme emotional dis
bance, and even the existence of circumstanc
which the offender reasonably believed provid
moral justification for his conduct are a
examples of mitigating facts which might att
the killing of a peace officer and which a
considered relevant in other jurisdictions."
(Footnotes omitted)

The petitioner reads this passage as stating
penalty can never be imposed if the offender is a yout
it differently. It is our understanding, that the Sup
saying it was wrong for Louisiana to mandate the death
out allowing for the consideration of possible miti
stances. The Court did not say that the presence of
factors would bar the application of the death penal
such factors should be taken into consideration in
whether or not to impose the death penalty in a part

Nor do we find merit in the petitioner's argum
10 of the Oklahoma Statutes. Here again, he contends
fact of his having been a juvenile at the time th
committed should bar the use of the death penalty
tioner's argument is not based on any particular sec
10, but on what he believes to be the underlying phi
juvenile code.

The underlying philosophy is rehabilitative.
court is theoretically engaged in determining the
child and of society rather than in adjudicating cri
The objectives are to provide measures of guidance
tation for the child and protection for society." I
States, 383 U.S.541, 86 S.Ct. 1045, 16 L.Ed.2d 84 (19
Application of Gault, 387 U.S. 1, 87 S.Ct. 1428, 18
(1967). There was always a realization that not a
could be helped, and the Oklahoma Legislature provid

beginning that under certain circumstances juv
prosecuted in a regular criminal proceeding. Re
4424; and see Laws 1968, ch. 282, § 112, now 10
1112.[1] Certification of a juvenile to stand trial
legitimate aspect of the juvenile code, and it wa
case. Matter of M.E., supra.

The petitioner insists, however, that cert
change the fact that he was only 16 when he comm
and he argues that it would be both cruel and unu
death penalty on him for that reason. In a conc
Furman v. Georgia, 408 U.S. 238, 92 S.Ct. 2726,
(1972), Justice Marshall discussed at length
development of the concept of cruel and unusual
suggested that there are four different types of
could be considered cruel and unusual: Those whi
the sense of being previously unknown; those whic
popular sentiment; those which involve extreme p
suffering; and those which are excessive and serv
lative purpose.

Justice Marshall indicates that the origi
the word "unusual" in the phrase "cruel and unusu
the English Bill of Rights of 1689) was inadver
there is nothing in the history of the Eighth
United States Constitution to shed light on its
Justice Marshall notes that capital punishment
unusual in the sense of being previously unknown,
the instant case asserts that it would be unu

---

[1]In recent years there has been a growi
protection of society demands stronger measures
type of statute for proceeding against a juveni
the first instance. Laws 1978, ch. 231, § 2 (
vagueness in State ex rel. Coats v. Johnson, Okl
(1979); and H.B. 1493, effective October 1, 1979

[2]The Oklahoma Constitution uses the phrase
punishment," Art. II, § 9. The petitioner bases
slight difference in wording, but for all inten
take these phrases to be identical.

punishment on a juvenile, since it has never
the petitioner overlooks the fact that when
stand trial as an adult he was certified to be

The petitioner asserts that the yo
executed in Oklahoma was 18 when he committe
cites Ridge v. State, 28 Okl.Cr. 150, 229 P.
this Court declined to impose the death penal
committed murder at the age of 14. But in
this Court said:

> "In this state, under the general pro
> criminal law and procedure construed
> tion with the law relating to juvenil
> the death penalty should not be impos
> boy under the age of 14 years convicte
> unless it clearly appears that the
> offender was a person with a sense o
> bility, intelligence, and understandi
> that of an ordinary person of the age o
>
> "To warrant the death penalty for
> offender convicted of murder, the off
> reprehensible in a superlative degre
> with the fact that the perpetrator wa
> having an ordinary comprehension of
> of the offense and its consequences."

Clearly, as long as 55 years ago it would no
unusual for a 16-year-old person to be giver
And under H.B. 1493, supra, a 16-year-old pe
could be subjected to a regular criminal pro
to be certified. The Legislature must have a
youth could be given the death penalty. We
be unusual, in the sense of the constituti
impose the death penalty on the petitioner.

Nor would the imposition of capital p
any of the ways mentioned by Justice Marshal
pointed out in Gregg v. Georgia, 428 U.S. 1
L.Ed.2d 859 (1976), capital punishment is
sentiment: In the four years between Furma
enacted statutes providing for the death p
And in California the people adopted an ame
constitution authorizing the death penalty.
tively superseded the ruling of the Californi
had ruled that capital punishment violated th

Nor will the manner of execution cause
suffering. The Oklahoma Legislature has pr
tion which will minimize pain--22 O.S.Su
the question of excessiveness can only be
of the particular crime. We shall turn

In light of the above discussion,
it will not constitute cruel and unusual
death penalty on the petitioner.

III

The remaining assignment of erro
is that the trial court erred in imposi
this case. His arguments are directed a
ulars filed by the State and the ruling c
of the assignment calls for a full revie
regarding punishment. For that reason we
sion of this assignment with the statuto
punishment.

The Bill of Particulars filed by
alleged three of the aggravating circu
O.S.Supp.1978, § 701.12:

> *That the murder was "especi
> atrocious, or cruel";
>
> *That the murder was "committed f
> avoiding or preventing a lawful
> cution."
>
> *That the petitioner would "cons
> uing threat to society."

The trial court found that all three circ
beyond a reasonable doubt. On the other
circumstance the court found was the yo
balancing these factors, the judge ind
great weight to the petitioner's youth, b
that the death penalty was proper in thi

The petitioner raises three argu
error. He contends that his motion to s
lars should have been sustained because
support the aggravating circumstance cla

contends that the evidence presen
establish the aggravating circumsta
And, third, he argues that the a
outweighed by mitigating factors, s
not have been imposed. Instead
individually, we shall address t
individually, taking into conside
sented.

A

The petitioner asserts that
was no more heinous, atrocious and
aggravating circumstance in the st
especially heinous, atrocious and c
lature must have intended to reach
ordinary."

In State v. Dixon, 283 So.2
Supreme Court considered the meanin

> "[W]e feel that the meaning
> matter of common knowledge,
> man would not have to guess
> It is our interpretation
> extremely wicked or shockin
> cious means outrageously wi
> that cruel means designed to
> of pain with utter indifferen
> ment of, the suffering of
> intended to be included are
> where the actual commission
> was accompanied by such addit
> the crime apart from the norm
> - the conscienceless or piti
> unnecessarily torturous to th

See also Tedder v. State, 322 So.2d

The State's position -- in t
sentencing hearing and on appeal --
victim and the manner in which the
murder especially abhorrent. A rev
clear that Patrolman Crabtree thoug
traffic stop. In addition to the p
car, Highway Patrol Officer Joe Inm
place. He was going the opposite d
stopped in the median long enough t

to meet him for a cup of coffee.
tion, he concluded that nothing o
Patrolman Crabtree "was showing n
Patrolman Inman drove away when h
of his car and walk toward the pe

Law enforcement officers p
society, and highway patrol offi
traffic tickets. They give aid
render assistance in time of nat
when an officer expects danger:
situation in which he has been pl
Patrolman Crabtree was not prepar
reason to expect it. We believ
officer in the performance of his
Florida Court, "extremely wicke
"outrageously wicked and vile."[3]
the petitioner's manner, we believ
to inflict a high degree of pain
the suffering of others." State v

We, accordingly, uphold th
first aggravating circumstance all

B

With regard to the second a
that the Bill of Particulars was
failed to specify the offense for
stopped. He also argues, as note
not a lawful arrest because Patr
incident at the service station.
petitioner's automobile had no re
O.S.1971, § 12-405(j), and that
been stopping the petitioner for t

---

[3] The statutes of Florida, T
the killing of a law enforcement o
duties is in itself an aggravating

State, it is immaterial whet
event.

We are not persuaded t
entirely on speculation as t
been thinking at the time.
petitioner's argument, for t
have been making an illegal
not see; but as the petitio
several miles: perhaps whil
officer observed some other

The point is that we h
who could testify to the rea
Crabtree, and he is dead. W
petitioner asks us to do, th
Stout v. State, 90 Okl.Cr.
State, Okl.Cr., 276 P.2d 784

It is important to re
vating circumstance is on the
than the officer. It is the
avoiding or preventing a law
701.12, supra. The trial co
its finding:

> "[T]he Court finds wit
> testimony that this De
> back to the authorit
> returned to his father
> be returned to the pe
> charged with his superv
> doubt in the Court's
> reasonable doubt the c
> particular time to avo

We affirm the trial cou
the patrolman stopped the car
behaved as he did. And the
conclusion that he shot Patrol
Missouri.

We also affirm the thi
petitioner had an extensive ju
crimes against persons as wel

earlier

s built
it have
in the
could
he did
ade for
r the

person
rolman
as the
gally.
e v.

aggra-
rather
se "of
lection
making

er why
tioner
rt the
ned to

. The
olving
ition,

while in custody after t
lives of other highway p
finding was justified by

We come now to the
sentencing hearing, the
social worker from Missc
witnesses. The social wo
petitioner's past and his
testified that the peti
Hospital for observation
proceedings. The other
private practice and the
University -- interviewed
proceedings. Their testi
substantially the same as

On the basis of th
tioner and his conversatio
diagnosed the petitioner
ality. At the certifica
states -- California and
sociopathic personalities
whether the treatment had
of their sociopathy. He
-- do seem to grow out of
sentencing hearing that t
type persons rather than
referred to a specific st
subjects were considered
doctor also stated that
reasoning ability or ment

The sociologist f
experience in the field
petitioner as an anti-so
factors in the petitioner

against the
the court's

rs. At the
nesses: A
ee expert
ncerning the
sychologist
ern State
rtification
atrist in
)ral Roberts
rtification
hearing was
on hearing.
o the peti-
sychologist
ial person-
l that two
r treating
be certain
ast grew out
perhaps 30%
said at the
con-artist
. (And he
anti-social
ated.) The
defective

ad extensive
gnosed the
ed about the
development.

He believed that the
work through his prob
a sufficient length c

The diagnosis
psychiatrist in priva
petitioner could be t
years of intensive th
certification hearing
tioner pulled the tri
the petitioner was no
but was killing the s
in Missouri. Neverth
the difference betwee
not think the rules a
did not believe the p
ever arose.

In his closing
brief and argument to
several mitigating ci
only one -- the pet
District Court indicat
but, nevertheless, fo
circumstances of the
ation to the petitione
in this case are very
the petitioner's youth

The petitioner
the murder. He stre
suffering from severe
that the killing was
he was raised. There
ality disorder. But a
difference between ri
trigger, and that is
State. Gonzales v. S

same reason, the petitioner's family history is useful in explaining why he behaved the way he did, but it does not excuse his behavior.

IV

In addition to ruling on the assignments of error that are raised, 21 O.S.Supp.1978, § 701.13, ¶ C, requires this Court to make three determinations. We have examined the record in this case and have given careful consideration to the arguments of counsel, both written in the briefs and presented at oral argument, and we hold:

> 1. That the sentence of death was not imposed "under the influence of passion, prejudice, or any other arbitrary factor." Section 701.13, ¶ C, 1. This was a notorious killing. The record indicates that Patrolman Crabtree was a resident of the county and, no doubt, public feeling was high. But the transcripts are completely devoid of the kinds of remarks that reveal bias, and we are sure that the judge in this case gave the petitioner a fair and impartial hearing.
>
> 2. That the evidence does support the judge's finding of statutory aggravating circumstances as enumerated in Section 701.12. The basis for this holding should be clear from the body of this opinion.
>
> 3. That the sentence of death is not excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant. This holding, too, finds ample support in our opinion.

Title 21 O.S.Supp.1978, § 701.13, ¶ E, provides:

> "The court shall include in its decision a reference to those similar cases which it took into consideration. In addition to its authority regarding correction of errors, the court, with regard to review of death sentences, shall be authorized to:
> "1. Affirm the sentence of death; or
> "2. Set the sentence aside and remand the case for modification of the sentence to imprisonment for life."

This conviction wherein the death penalty was assessed places this Court in the same position that confronted the Supreme Court of South Carolina in State v. Shaw, 255 S.E.2d 799, 807 (S.C. 1979), wherein that Court stated:

> "We have compared the death sentences imposed upon appellants with the sentences imposed in all prior capital cases tried under the current death penalty statutes and are satisfied that there are no similar cases against which the proportionality of the sentences imposed upon appellants can

be measured.

> "The inability of this Court to compare this case with any other similar cases does not require, however, that appellants' sentences be set aside. Any system of review that requires a comparison of each case with all similar prior cases must have a beginning. There will be a first case for each type or category of capital case that may appear and that first case necessarily cannot be compared to any other similar cases. The first case must stand alone, otherwise comparative sentence review would be forever impossible." (Footnote omitted)

An attempt has been made to compare this case with prior cases that were tried and reviewed under death penalty statutes that are definitionally different from the current statutes. Hence, we find those cases provide no basis for meaningful sentence review.[4]

The current death penalty statutes comply with the guidelines set out in Gregg. We have considered and overruled each assignment of error by the petitioner and have completed the statutorily mandated sentence review. We have searched the record for any fundamental error that might have prejudiced the petitioner and have found none. We find no other reason to disturb or modify petitioner's death sentence.

The judgment of guilt and the sentence of death are AFFIRMED.

AN APPEAL FROM THE DISTRICT COURT, CREEK COUNTY, OKLAHOMA, HONORABLE CHARLES S. WOODSON, JUDGE

MONTY LEE EDDINGS, petitioner, was convicted of the offense of Murder in the First Degree; was sentenced to death, and appeals. AFFIRMED.

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[4] A list of cases with which an attempt to compare is: Manuel v. State, Okl.Cr., 560 P.2d 1008 (1977); Clark v. State, Okl.Cr., 558 P.2d 674 (1977); Strange v. State, Okl.Cr., 452 P.2d 292 (1969); Fesmire v. State, Okl.Cr., 456 P.2d 573 (1969); French v. State, Okl.Cr., 416 P.2d 171 (1966); Dare v. State, Okl.Cr., 378 P.2d 339 (1963); Doggett v. State, Okl.Cr., 371 P.2d 523 (1962); Young v. State, Okl.Cr., 357 P.2d 562 (1960); Spence v. State, Okl.Cr., 353 P.2d 1114 (1960); Williams v. State, Okl.Cr., 321 P.2d 988 (1958); and Klettke v. State, 92 Okl.Cr. 366, 223 P.2d 787 (1950).

JAY C. BAKER, C. RABON MARTIN
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BAKER, BAKER and MARTIN,
TULSA, OKLAHOMA,
Attorneys for Petitioner,

JAN ERIC CARTWRIGHT
ATTORNEY GENERAL,
MICHAEL JACKSON, ASST.ATTY.GEN
Attorneys for Respondent.

OPINION BY BRETT, J.
CORNISH, P. J., CONCURS
BUSSEY, J., CONCURS SPECIALLY

BUSSEY, J., Concurring:

For the reasons and in accordance with the author
cited by my colleague J. Brett, I am of the opinion tha
judgment and sentence should be affirmed. Appellant's
that the State suppressed evidence critical to the defe
violation of Brady v. Maryland, 373 U.S. 83, 10 L.Ed.2d
83 S.Ct. 1194 (1963), is not supported by the record, f
is clear that counsel for Appellant was not deprived of
such evidence but did in fact make the following stipul
during the mitigation - aggravation hearing:

> "MR. BAKER: Yes, Your Honor. I apologize for th
> We finally contacted Mr. Jim Dickey at work. We
> able to make the following stipulation regarding
> testimony would be were he here to testify today
>
> "And that would be that he observed the Volkswage
> leave the Howard Johnson Filling Station in the m
> that the other witnesses have described, going of
> road; that he then went in and informed Trooper C
> who was drinking coffee in the restaurant, of wha
> seen; whereas Trooper Crabtree responded: I will
> it out." [Tr. 270-271 Hearing of May 15, 1978]

Appellant's further contention that the arrest was
by reason of it having been made for a traffic violatio
committed in the trooper's presence is likewise without
The State's photograph No. 2 of the Volkswagen appearin
Transcript page 5, certification hearing of June 14, 19
State's Exhibit No. 13 admitted by stipulation during t
vation-mitigation hearing of May 15, 1978, Transcript p
33, were both photographs of the Volkswagen driven by A
at the time of the murder. These clearly demonstrate t
Volkswagen did not have rear fenders or mud flaps and w
fore in violation of 47 O.S.1971 § 12-405(j)[1], punishab
the provisions of 47 O.S.1971, § 17-101.

---

[1] "(j) All trucks, trailers and other vehicles op
the highways, except animal-drawn vehicles, not e
with fenders over the rearmost wheels shall have
thereto a rubber or fabric apron directly in rear
rearmost wheels, and hanging perpendicular from t
the vehicle. Said apron shall be of such a size
prevent the bulk of the spray or other substances
the roadway from being thrown on the windshield o
vehicle and thereby obscuring the vision through

Trooper Crabtree followed Appellant's vehicle
hours and had ample opportunity to observe the viola
evidence alone is sufficient to support the legality

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1 (con)
"of the driver of said vehicle. The provisio
subsection shall not apply to a farm tractor m
the state highway system at a speed less than
miles per hour."

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF

MONTY LEE EDDINGS,)
)
Appellant,)
)
-vs-) No. C-78-325
)
THE STATE OF OKLAHOMA,)
)
Appellee.)

ORDER DENYING PETITION FOR REHEARING, ORDERING ISSUANCE OF THE MANDATE, AND STAYING E

On April 7, 1980, the above appellant, Monty filed his Petition for Rehearing in the above style Certiorari Appeal from his conviction in Creek Cou Court Case No. CRF-77-118. Appellant was convicted of First Degree Murder and the Death Sentence was Court affirmed appellant's conviction on March 21, 29, 1980, petitioner filed his Supplement to P Rehearing, in which he cites the United States Supre sion in Godfrey v. Georgia, 100 S.Ct. 1759 (1980). August 4, 1980, the Attorney General filed his Res Petition for Rehearing.

NOW THEREFORE, after giving full consider Petition for Rehearing filed herein, and being fully premises, this Court finds that the Petition for R be, and the same is therefore, DENIED. The mandate issue FORTHWITH.

IT IS FURTHER ORDERED, that the Execution W shall be stayed for six (6) months, or until the fu this Court, pending any appeal appellant may further

WITNESS OUR SIGNATURES and the Seal of this 15th day of September, 1980.

TOM R. CORNISH,

TOM BRETT, JUDGE

HEZ J. BISSELL, J

ATTEST:

Clerk

80-5727

Supreme
FIL
NOV 1
MICHAEL ROD

IN THE SUPREME COURT OF THE

MONTY LEE EDDINGS,
Petitioner,
vs.
STATE OF OKLAHOMA,
Respondent.

NO.

MOTION TO PROCEED IN FORM

The Petitioner, Monty Lee Ed
asks leave to file the attached Petiti
to the Court of Criminal Appeals of th
pre payment of costs to proceed In Form
to Rule 46. Attached is the Affidavit
presently incarcerated in the Oklahoma
McAlester, Oklahoma. Also enclosed is
attorney for Petitioner.

BAKER AN

BY:

JAY C. B
Attorney
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Tulsa, O
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